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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,441	05/29/2001	Doug Grumann	10002687-1	3760
22879	7590	02/08/2008		
HEWLETT PACKARD COMPANY P O BOX 272400, 3404 E. HARMONY ROAD INTELLECTUAL PROPERTY ADMINISTRATION FORT COLLINS, CO 80527-2400			EXAMINER YIGDALL, MICHAEL J	
			ART UNIT 2192	PAPER NUMBER
			NOTIFICATION DATE 02/08/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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AK

**Office Action Summary**

Application No.

09/865,441

Applicant(s)

GRUMANN, DOUG

Examiner

Michael J. Yigdall

Art Unit

2192

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 November 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6,8,9 and 11-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,9 and 11-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This Office action is responsive to Applicant's submission filed on November 13, 2007. Claims 1-6, 8, 9 and 11-21 are pending.

#### ***Response to Amendment***

2. The rejection of claim 10 under 35 U.S.C. 112, second paragraph, is withdrawn in view of Applicant's amendment canceling that claim.

#### ***Response to Arguments***

3. Applicant's arguments have been fully considered but they are not persuasive.

Applicant contends that "nowhere does Bonnell disclose or suggest that the manager software 200 and agent software 202 are used as performance management tools" (remarks, page 6). Applicant states that "Bonnell is directed to scheduling and execution of applications, but most definitely not to software that collects performance management information, as one of ordinary skill in the art would understand this term" (remarks, page 6).

However, the examiner respectfully disagrees with Applicant's characterization. The agent software system in Bonnell is most certainly a performance management tool. Applicant notes that the agent software system includes a run queue scheduler that checks a timer and "wakes up" to execute jobs or commands (remarks, page 6). Indeed, this is an example of managing performance. Applicant seems to imply that a performance management tool is necessarily "software that collects performance management information," but the term is not so limited in the claims. Nonetheless, Bonnell describes other examples, such as the process cache

manager within the agent software system that fills a process cache periodically with information concerning the processes that are present on the host server computer at any given moment (see, for example, column 3, lines 44-49). Bonnell further describes a parameter and recovery action manager within the agent software system that monitors resources on the server computer such as “disk space remaining” and takes action to recover from alarm levels (see, for example, column 3, lines 53-58). Thus, to one of ordinary skill in the art, given a broad and reasonable interpretation of the claims, the agent software system in Bonnell represents a performance management tool.

Moreover, the rejections are based on combinations of references. The test for obviousness is not that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Applicant implicitly admits that the Knight reference teaches performance management tools (remarks, page 7).

Applicant contends that “Bonnell does not, as the Examiner asserts, disclose or suggest modifying the configuration of performance management tools” (remarks, page 6). Applicant indicates that Bonnell teaches “a modification of the information that the software agent 202 provides,” but contends that “nowhere does Bonnell disclose or suggest that either agents or performance management tools themselves are modified” (remarks, page 7).

However, the examiner respectfully submits that modifying the information that the agent software system is to provide to the console is, in fact, modifying the configuration of the agent

software system. Applicant refers to the data structures illustrated in FIG. 18 of Bonnell (remarks, page 7). Bonnell states that the interest masks illustrated in FIG. 18 “associate all of the information necessary to determine whether a given registered console is ‘interested’ in receiving information corresponding to the object that owns the interest mask” (column 11, lines 42-46). After the console sends a registration message to the agent, Bonnell states, “The agent then makes appropriate entries in the interest masks discussed in relation to FIG. 18 in order to reflect the registering console’s requests” (column 12, lines 10-13). Thus, the interest masks represent the configuration of the agents, and Bonnell therefore teaches modifying the configuration of the agents. Accordingly, Bonnell teaches modifying the configuration of performance management tools.

Furthermore, the examiner notes that the claims recite modifying the configuration of the performance management tools, and not somehow modifying the performance management tools themselves, as Applicant seems to imply.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-6, 8, 9 and 11-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,655,081 to Bonnell et al. (art of record, “Bonnell”) in view of U.S. Patent

No. 6,792,392 to Knight (art of record, "Knight") and in view of U.S. Patent No. 6,272,677 to Lam et al. (art of record, "Lam").

With respect to claim 1 (previously presented), Bonnell teaches a method for automatically configuring performance management software in a computer system (see, for example, the abstract), comprising:

inventorying and discovering applications (see, for example, application discovery manager 78 in FIG. 12 and column 7, lines 1-8, which shows discovering applications in the computer system).

In Bonnell, agent software system 202 in FIG. 12 is a performance management tool. Bonnell teaches identifying performance management tools (see, for example, step 298 in FIG. 19), but does not expressly disclose:

inventorying and discovering performance management tools.

However, in an analogous art, Knight teaches discovering performance management tools (see, for example, column 2, line 66 to column 3, line 2, which shows finding performance DLLs, and column 2, lines 50-55, which shows that the performance DLLs are performance management tools) to automatically configure performance management software (see, for example, counter collection application 14 in FIG. 1 and column 2, lines 9-12). This enables the performance management software to monitor different subsystems without knowing in advance what performance management tools are available (see, for example, column 2, lines 25-29 and 56-61, and column 3, lines 15-18).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to supplement the method of Bonnell so as to inventory and discover performance management tools, as Knight suggests. In Bonnell, this would enable the manager software system 200 in FIG. 13, for example, to monitor and manage resources in different computer systems (see, for example, column 6, lines 61-67) without knowing in advance what agents are available.

Bonnell in view of Knight further teaches:

generating an inventory list of the applications and the performance management tools (see, for example, object database 49 in FIG. 13, and column 2, lines 36-42, which shows generating such inventory information).

using the inventory list, modifying configuration of the performance management tools in response to the discovered applications so that the performance management tools operate differently in response to changes on the system being analyzed (see, for example, column 12, lines 1-31, which shows modifying the configuration of the agents, and column 12, lines 32-63, which shows that the agents operate differently in response to such changes), wherein the configuration of the performance management tools consists of application-specific interfaces, performance thresholds, collection parameters and alarms applicable to specific performance management tools and the current operating system environment (see, for example, column 11, lines 17-41, which shows that the configuration includes application-specific interfaces and collection parameters, and column 13, lines 9-22, which further shows that the configuration includes performance thresholds and alarms).

Bonnell in view of Knight further teaches automatically initializing the agents in response to the discovered applications to reflect the configuration of the agents (see, for example, column 10, lines 42-58), but in terms of “reinitializing” the agents, does not expressly disclose:

automatically restarting, without intervention of an administrator, the performance management tools in response to the discovered applications to reflect changes to the configuration of the performance management tools.

Nonetheless, Lam teaches automatically restarting agent software systems to reflect changes in the configuration of the agents (see, for example, column 4, lines 12-40). This eliminates the need for manual intervention (see, for example, column 4, lines 40-45).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the method of Bonnell and Knight so as automatically restart the performance management tools in response to the discovered applications to reflect changes to the configuration of the performance management tools, as Lam suggests. Such as in Lam, this would eliminate any need for administrator intervention.

With respect to claim 2 (original), the rejection of claim 1 is incorporated, and Bonnell in view of Knight and Lam further teaches that the method is executed upon start up of the computer system (see, for example, Knight, column 2, line 66 to column 3, line 2, which shows that the method is executed upon startup).

With respect to claim 3 (original), the rejection of claim 1 is incorporated, and Bonnell in view of Knight and Lam further teaches that the method is executed on demand (see, for



example, Bonnell, step 118 in FIG. 8, which shows that the method is executed on demand based on a signal from the manager software system).

With respect to claim 4 (original), the rejection of claim 1 is incorporated, and Bonnell in view of Knight and Lam further teaches that the method is executed periodically (see, for example, Bonnell, step 116 in FIG. 8, which shows that the method is executed periodically based on a timer).

With respect to claim 5 (original), the rejection of claim 1 is incorporated, and Bonnell in view of Knight and Lam further teaches that the method is executed automatically (see, for example, Bonnell, column 7, lines 1-8, which shows that the method is executed automatically).

With respect to claim 6 (original), the rejection of claim 1 is incorporated, Bonnell in view of Knight and Lam further teaches that the step of generating the inventory list comprises writing inventory information to an ASCII-format file (see, for example, Bonnell, column 3, lines 62-63, which shows that such information is written to an ASCII-format file).

With respect to claim 8 (original), the rejection of claim 1 is incorporated, and Bonnell in view of Knight and Lam further teaches that the inventory step comprises inventorying installed application programs and installed performance management tools (see, for example, Bonnell, application discovery manager 78 in FIG. 12 and column 7, lines 1-8, and see, for example, Knight, column 2, line 66 to column 3, line 2).

With respect to claim 9 (original), the rejection of claim 8 is incorporated, and Bonnell in view of Knight and Lam further teach inventorying active application programs and active performance management tools (see, for example, Bonnell, application discovery manager 78 in FIG. 12 and column 7, lines 1-8, and see, for example, Knight, column 2, line 66 to column 3, line 2), wherein the active application programs and performance management tools are flagged to indicate an active status (see, for example, Bonnell, column 11, lines 31-35, which shows that active applications are flagged).

With respect to claim 11 (original), the rejection of claim 1 is incorporated, and Bonnell in view of Knight and Lam further teaches storing the inventory list and the performance management tools configuration in a memory (see, for example, Bonnell, storage devices 24 and 26 in FIG. 11).

With respect to claim 12 (previously presented), the claim is directed to an apparatus that is analogous to the method of claim 1 (see the rejection of claim 1 above). Note that Bonnell in view of Knight and Lam further teaches a registry that reads information from hardware devices, application programs, and performance management programs (see, for example, Knight, system registry 22 in FIG. 1).

With respect to claims 13-17 (original), the rejection of claim 12 is incorporated, and the elements recited in the claims are analogous to those of claims 2, 4, 6, 8 and 9, respectively (see the rejection of claims 2, 4, 6, 8 and 9 above).

With respect to claim 18 (original), the rejection of claim 12 is incorporated, and Bonnell in view of Knight and Lam further teaches an interface that provides manual updating of the inventory file (see, for example, Bonnell, graphical user interface 50 in FIG. 13, and FIGS. 5a and 5b, which shows that such information is manually updatable).

With respect to claim 19 (previously presented), the claim is directed to a method that is analogous to the method of claim 1 (see the rejection of claim 1 above).

With respect to claim 20 (original), the rejection of claim 19 is incorporated, and the elements recited in the claim are analogous to those of claims 1, 2 and 10 (see the rejection of claims 1, 2 and 10 above). Note that Bonnell in view of Knight and Lam further teaches manually amending the inventory file (see, for example, Bonnell, graphical user interface 50 in FIG. 13, and FIGS. 5a and 5b, which shows that such information is manually amendable).

With respect to claim 21 (previously presented), the rejection of claim 1 is incorporated, and Bonnell in view of Knight and Lam further teaches enabling the administrator to manually edit the generated inventory list and a configuration of the performance management tools differently for each installed application and performance management tool, and according to the current operating system environment (see, for example, Bonnell, graphical user interface 50 in FIG. 13, and FIGS. 5a and 5b, which shows that such information is manually editable, and column 4, lines 30-56, which further shows that the agents are configured differently for different applications and operating environments).

*Conclusion*

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Yigdall whose telephone number is (571) 272-3707. The examiner can normally be reached on Monday through Friday from 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

My

Michael J. Yigdall  
Examiner  
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